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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/658,021

09/09/2003

Joseph Bibb Cain

GCSD-1469 (51335)

2804

27975

7590

10/25/2007

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EXAMINER

ELALLAM, AHMED

ART UNIT

PAPER NUMBER

2616

NOTIFICATION DATE

DELIVERY MODE

10/25/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

creganoa@addmg.com

<p align="center"><b>Office Action Summary</b></p>	<b>Application No.</b> 10/658,021	<b>Applicant(s)</b> CAIN ET AL.	
	<b>Examiner</b> AHMED ELALLAM	<b>Art Unit</b> 2616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-7, 9-17, 19- 26, 28-30, and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-3, 5-7, 9-17, 19- 26, 28-30, and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)<br>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)<br>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/19/2007 and 08/13/2007</u> . | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____<br>5) <input type="checkbox"/> Notice of Informal Patent Application<br>6) <input type="checkbox"/> Other: _____. |
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## DETAILED ACTION

This office action is responsive to Amendment filed on 7/19/2007.

Claims 1-3, 5-7, 9-17, 19- 26, 28-30, and 32 are pending.

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 2, 9 and 14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14 and 15 of U.S. Patent No. 7,085,290. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Regarding claims 1, 2, 9 and 14, the difference between claims 1, 2, 9 and 14 and that of the patent is that claims 1, 2, 9 and 14 of the instant Application do not specify the establishing of the QoS thresholds is from among a plurality of QoS thresholds, and doesn't specify the signal characteristic is a gain, further instant claims 1, 2, 9 and 14 specify selecting between a unicast and broadcast mode based upon the QoS threshold. However, as to the elimination of plurality of QoS thresholds limitation and not specifying the characteristic to be a gain, it has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd.App.1969); omission of a reference element whose function is not needed would be obvious to one skilled in the art. As to the unicast or multicast mode selection, it would have been obvious to an ordinary person of skill in the art at the time the invention to select a unicast or multicast based on the level of interference in the system using a QoS threshold (QoS is related to system interference). The motivation would be the ability to provide different services in accordance with the level of QoS that can be assured.

3. Claims 2, 3, 5, 6, 7, 10, 11, 12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2, of U.S. Patent No. 7,079,552. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Regarding claims 2, 10, 11, 12, the difference between instant claims 2, 10, 11, 12 and claim 2 of the patent is that claim 2 of the instant Application doesn't specify the

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establishing of the QoS thresholds is from among a plurality of QoS thresholds, and determining at a layer below the upper layer, whether to require data reception acknowledgment based on the QoS threshold.

Regarding claims 3, 5, 6, 7, the difference between instant claim 3, 5 and 6, and claim 2 and 6, 7, 11 of the patent is that claims 3, 5 and 6 of the instant Application do not specify the establishing of the QoS thresholds is from among a plurality of QoS thresholds.\*\*\* However, it has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd.App.1969); omission of a reference element whose function is not needed would be obvious to one skilled in the art.

As to claims 15-17, 19-26, 28-30, and 32, these claims have similar scope of rejected claims above, it can be easily shown that they subject the same double patenting over U.S Patents 7,085,290 and/or 7,079,552.

### ***Response to Arguments***

4. Applicant's arguments, see Remarks, filed 7/19/2007, with respect to claims 1, 14 and 24 have been fully considered and are persuasive. The art rejection of claims 1-3, 5-7, 9-17, 19-26, 28-30, and 32 has been withdrawn.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **AHMED ELALLAM** whose telephone number is (571) 272-3097. The examiner can normally be reached on 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AHMED ELALLAM  
Examiner  
Art Unit 2616  
10/18/07

  
CHI PHAM  
SUPERVISORY PATENT EXAMINER

10/22/07